

APPEAL NO. 171586
FILED AUGUST 22, 2017

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing was held on May 26, 2017, in (city), Texas, with (hearing officer) presiding as hearing officer. The hearing officer resolved the disputed issue by deciding that the Texas Department of Insurance, Division of Workers' Compensation (Division) should not appoint a subsequent designated doctor to address extent of injury and disability. The appellant (claimant) appealed, disputing the hearing officer's determination. The claimant contends that the designated doctor's communication with the employer was improper and created a bias against the claimant and requires the appointment of a subsequent designated doctor to address extent of injury and disability. The respondent (carrier) responded, urging affirmance of the disputed determination.

DECISION

Reversed and rendered.

The parties stipulated, in part, that the claimant sustained a compensable injury on (date of injury). It is undisputed that on January 18, 2017, the Division appointed (Dr. S) as designated doctor to opine on the extent of the compensable injury and disability. The evidence reflects that Dr. S examined the claimant on February 6, 2017. In his narrative report, in a section titled analysis of clinical findings and timeline, Dr. S stated that he telephoned the claimant's employer. As a result of that telephone call, the employer submitted two statements from co-workers who were eyewitnesses to the claimant's work-related incident. Dr. S uses information from the co-workers' statements in part to justify his opinion that the compensable injury does not extend to several of the disputed extent-of-injury conditions.

Section 408.125(d) provides, in part, that to avoid undue influence on a person selected as a designated doctor, only the injured employee or an appropriate member of the staff of the Division may communicate with the designated doctor about the case regarding the injured employee's medical condition or history before the examination of the injured employee by the designated doctor. After that examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate Division staff members. 28 TEX. ADMIN. CODE § 127.15(a)(2) (Rule 127.15(a)(2)) provides that to avoid undue influence on the designated doctor after the examination is completed, communication with the designated doctor regarding the injured employee's medical condition or history may be made only through appropriate Division staff. See *also* Rule 127.15 (a)(3).

We hold that under the facts of this case, Dr. S' contact with the claimant's employer after he examined the claimant was improper and contrary to Section 408.125(d) and Rule 127.15(a)(2). Accordingly, we reverse the hearing officer's determination that the Division should not appoint a subsequent designated doctor to address extent of injury and disability and render a new decision that the Division should appoint a subsequent designated doctor to address extent of injury and disability.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**RICHARD J. GERGASKO, PRESIDENT
6210 EAST HIGHWAY 290
AUSTIN, TEXAS 78723.**

Margaret L. Turner
Appeals Judge

CONCUR:

K. Eugene Kraft
Appeals Judge

Carisa Space-Beam
Appeals Judge